

AN ACT

relating to certain construction liability claims concerning public buildings and public works.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle F, Title 10, Government Code, is amended by adding Chapter 2272 to read as follows:

CHAPTER 2272. CERTAIN CONSTRUCTION LIABILITY CLAIMS

Sec. 2272.001. DEFINITIONS. In this chapter:

(1) "Action" means a court or judicial proceeding or an arbitration. The term does not include an administrative action.

(2) "Construction" includes:

(A) the initial construction of an improvement to real property;

(B) the construction of an addition to an improvement to real property; or

(C) the repair, alteration, or remodeling of an improvement to real property.

(3) "Construction defect" means a deficiency in the construction of an improvement to real property, including a deficiency in or arising out of the design, specifications, surveying, planning, or supervision of the construction, that is the result of:

(A) the use of defective materials, products, or

1 components in the construction;

2 (B) a violation of a building code applicable by  
3 law to the construction;

4 (C) a failure of the design of an improvement to  
5 real property to meet the professional standards of care applicable  
6 at the time of governmental approval of the design or as otherwise  
7 applicable if no governmental approval of the design was required  
8 or obtained; or

9 (D) a failure to perform the construction in  
10 accordance with the accepted trade standards for good and  
11 workmanlike construction.

12 (4) "Contractor" means a person engaged in the  
13 business of developing, constructing, fabricating, repairing,  
14 altering, or remodeling improvements to real property.

15 (5) "Design professional" means an individual  
16 registered as an architect under Chapter 1051, Occupations Code, or  
17 a person licensed as an engineer under Chapter 1001, Occupations  
18 Code.

19 (6) "Governmental entity" means:

20 (A) the state;

21 (B) a municipality, county, public school  
22 district, or special-purpose district or authority;

23 (C) a district, county, or justice of the peace  
24 court;

25 (D) a board, commission, department, office, or  
26 other agency in the executive branch of state government, including  
27 an institution of higher education as defined by Section 61.003,

1 Education Code;

2 (E) the legislature or a legislative agency; or

3 (F) the Supreme Court of Texas, the Texas Court  
4 of Criminal Appeals, a court of appeals, or the State Bar of Texas  
5 or another judicial agency having statewide jurisdiction.

6 (7) "Subcontractor" means a contractor directly  
7 retained and compensated by another contractor to perform labor or  
8 perform labor and supply materials in the construction.

9 (8) "Supplier" means a person who provides only  
10 materials, equipment, or other supplies for the construction.

11 Sec. 2272.002. APPLICABILITY OF CHAPTER. (a) This chapter  
12 applies only to a claim:

13 (1) for:

14 (A) damages arising from damage to or loss of  
15 real or personal property caused by an alleged construction defect  
16 in an improvement to real property that is a public building or  
17 public work; or

18 (B) indemnity or contribution for damages  
19 described by Paragraph (A);

20 (2) asserted by a governmental entity with an interest  
21 in the public building or public work affected by the alleged  
22 construction defect; and

23 (3) asserted against a contractor, subcontractor,  
24 supplier, or design professional.

25 (b) This chapter does not apply to:

26 (1) a claim for personal injury, survival, or wrongful  
27 death;

1           (2) a claim involving the construction of residential  
2 property covered under Chapter [27](#), Property Code;

3           (3) a contract entered into by the Texas Department of  
4 Transportation;

5           (4) a project that receives money from a state or  
6 federal highway fund; or

7           (5) a civil works project as defined by Section  
8 [2269.351](#).

9           Sec. 2272.003. REPORT. (a) Before bringing an action  
10 asserting a claim to which this chapter applies, the governmental  
11 entity must provide each party with whom the governmental entity  
12 has a contract for the design or construction of an affected  
13 structure a written report by certified mail, return receipt  
14 requested, that clearly:

15           (1) identifies the specific construction defect on  
16 which the claim is based;

17           (2) describes the present physical condition of the  
18 affected structure; and

19           (3) describes any modification, maintenance, or  
20 repairs to the affected structure made by the governmental entity  
21 or others since the affected structure was initially occupied or  
22 used.

23           (b) Not later than the fifth day after the date a contractor  
24 receives a report under Subsection (a), the contractor must provide  
25 a copy of the report to each subcontractor retained on the  
26 construction of the affected structure whose work is subject to the  
27 claim.

1       Sec. 2272.004. OPPORTUNITY TO INSPECT AND CORRECT. (a)  
2 Before bringing an action asserting a claim to which this chapter  
3 applies, the governmental entity must allow each party with whom  
4 the governmental entity has a contract for the design or  
5 construction of an affected structure and who is subject to the  
6 claim and any known subcontractor or supplier who is subject to the  
7 claim:

8               (1) a reasonable opportunity to inspect any  
9 construction defect or related condition identified in the report  
10 for a period of 30 days after sending the report required by Section  
11 2272.003; and

12               (2) at least 120 days after the inspection to:

13                       (A) correct any construction defect or related  
14 condition identified in the report; or

15                       (B) enter into a separate agreement with the  
16 governmental entity to correct any construction defect or related  
17 condition identified in the report.

18       (b) The governmental entity is not required to allow a party  
19 to make a correction or repair under Subsection (a) if:

20               (1) the party:

21                       (A) is a contractor and cannot provide payment  
22 and performance bonds to cover the corrective work;

23                       (B) cannot provide liability insurance or  
24 workers' compensation insurance;

25                       (C) has been previously terminated for cause by  
26 the governmental entity; or

27                       (D) has been convicted of a felony; or

1           (2) the governmental entity previously complied with  
2 the process required by Subsection (a) regarding a construction  
3 defect or related condition identified in the report and:

4                   (A) the defect or condition was not corrected as  
5 required by Subsection (a)(2)(A) or an agreement under Subsection  
6 (a)(2)(B); or

7                   (B) the attempt to correct the construction  
8 defect or related condition identified in the report resulted in a  
9 new construction defect or related condition.

10       Sec. 2272.005. TOLLING OF LIMITATIONS AND REPOSE PERIODS.  
11 If the report and opportunity to correct required by Sections  
12 2272.003 and 2272.004 are provided during the final year of a  
13 limitations or repose period applicable to the claim, the  
14 limitations or repose period is tolled until the first anniversary  
15 of the date on which the report is provided.

16       Sec. 2272.006. DISMISSAL. (a) If a governmental entity  
17 brings an action asserting a claim to which this chapter applies  
18 without complying with Sections 2272.003 and 2272.004, the court,  
19 arbitrator, or other adjudicating authority shall dismiss the  
20 action without prejudice.

21           (b) If an action is dismissed without prejudice under  
22 Subsection (a) and the governmental entity brings a second action  
23 asserting a claim to which this chapter applies without complying  
24 with Sections 2272.003 and 2272.004, the court, arbitrator, or  
25 other adjudicating authority shall dismiss the action with  
26 prejudice.

27       Sec. 2272.007. RECOVERY OF REPORT COSTS. If a report

1 provided by a governmental entity under Section 2272.003 identifies  
2 a construction defect that is corrected under Section 2272.004 or  
3 for which the governmental entity recovers damages, the party  
4 responsible for that construction defect shall pay the reasonable  
5 amounts incurred by the governmental entity to obtain the report  
6 with respect to identification of that construction defect.

7 Sec. 2272.008. EMERGENCY REPAIRS BY GOVERNMENTAL ENTITY.  
8 This chapter does not prohibit or limit a governmental entity from  
9 making emergency repairs to the property as necessary to protect  
10 the health, safety, and welfare of the public or a building  
11 occupant.

12 Sec. 2272.009. INSURANCE TREATMENT OF CLAIM. If a party, in  
13 connection with a potential claim against the party, receives a  
14 written notice of an alleged construction defect or a report under  
15 Section 2272.003 identifying a construction defect and provides the  
16 notice or report to the party's insurer, the insurer shall treat the  
17 provision of the notice or report to the party as the filing of a  
18 suit asserting that claim against the party for purposes of the  
19 relevant policy terms.

20 SECTION 2. (a) Chapter 2272, Government Code, as added by  
21 this Act, applies only to a cause of action that accrues on or after  
22 the effective date of this Act.

23 (b) Section 2272.009, Government Code, as added by this Act,  
24 applies only to an insurance policy delivered, issued for delivery,  
25 or renewed on or after January 1, 2020.

26 SECTION 3. This Act takes effect immediately if it receives  
27 a vote of two-thirds of all the members elected to each house, as

H.B. No. 1999

1 provided by Section 39, Article III, Texas Constitution. If this  
2 Act does not receive the vote necessary for immediate effect, this  
3 Act takes effect September 1, 2019.



H.B. No. 1999

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1999 was passed by the House on April 25, 2019, by the following vote: Yeas 99, Nays 34, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1999 on May 23, 2019, by the following vote: Yeas 108, Nays 34, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 1999 was passed by the Senate, with amendments, on May 21, 2019, by the following vote: Yeas 29, Nays 2.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor